IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

WEDNESDAY, THE 21ST MARCH 2007 / 30TH PHALGUNA 1928

OP.No. 23042 of 1999(R)

PETITIONER:

MYLAN,
S/O. KETCHA BOYAN,
RESIDING AT KUPPANDA KOUNDANOOR,
OZHALAPATHI,
CHITTUR.

BY ADV. SRI.K.I.MAYANKUTTY MATHER
ADV. SMT.S.AMINA

RESPONDENTS:
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1. THE TALUK LAND BOARD,
CHITTUR.

2. STATE OF KERALA,
REPRESENTED BY CHIEF SECRETARY TO GOVERNMENT,
GOVERNMENT OF KERALA,
THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SHRI K.G. BHASKARAN.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 21/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP.No. 23042 of 1999(R)

ORDER ON C.M.P.NO. 38270 OF 1999 IN O.P.NO. 23042 OF 1999

DISPOSED OF VIDE JUDGMENT DATED 21.03.2007.

21.03.2007 SD/- K.T. SANKARAN, JUDGE.

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1	:	TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN CRP.2731/79.
EXT.P2	:	TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN CRP.NO. 3729/81.
EXT.P3	:	TRUE COPY OF THE ORDER OF THE LAND TRIBUNAL, CHITTUR IN O.A. 1457/76.
EXT.P4	:	TRUE COPY OF THE PURCHASE CERTIFICATE ISSUED BY THE LAND TRIBUNAL, CHITTUR.
EXT.P5	:	TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN O.P. 1152/96.
EXT.P6	:	TRUE COPY OF THE REPORT SUBMITTED BY THE AUTHORISED OFFICER.
EXT.P7	:	TRUE COPY OF THE JUDGMENT OF THIS HONOURABLE COURT IN O.P. 1964/98.
EXT.P8	:	TRUE COPY OF THE ORDER OF THE 1ST RESPONDENT.
EXT.P9	:	TRUE COPY OF THE BASIC TAX RECEIPT EVIDENCING PAYMENT OF BASIC TAX.
EXT.P10	:	TRUE COPY OF THE NOTICE ISSUED BY THE 1ST RESPONDENT.

/TRUE COPY/

K.T. SANKARAN, J.

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O.P. No. 23042 OF 1999

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Dated this the 21st March, 2007

J U D G M E N T

The question involved in this Original Petition is whether an order passed by the Taluk Land Board allowing an application under section 85 (8) of the Kerala Land Reforms Act could be reviewed by the Taluk Land Board on the ground that at the time when the Taluk Land Board passed the order, the period for which it was constituted was over.

2. Ketcha Boyan, the predecessor in interest of the petitioner, was the cultivating tenant in respect of 8.56 acres of land under Subbayya Gownder . Ceiling case was initiated against Subbayya Gownder on the file of the Taluk Land Board , Chittur. Ketcha Boyan filed a claim petition under section 85(8) of the Kerala Land Reforms Act (hereinafter referred to as " Act ".). The Taluk Land Board rejected the claim . Ketcha Boyan challenged that order in C.R.P.No. 2731 of 1979. C.R.P.No.2731 of 1979 was disposed of on 30.07.1981.

3. Ketcha Boyan had filed an application under section 72B of the Act before the Land Tribunal for the purchase of right, title and interest of the land lord in respect of the lands. Land Tribunal had dismissed that application. Ketcha Boyan filed an appeal before the appellate authority . At the time when the Civil Revision Petition was disposed of on 30.07.1981, the appeal was pending before the appellate authority. The revisional court did not interfere with the dismissal of the application filed by Ketcha Boyan under section 85(8) of the Act. However, it was observed in Ext. P1 judgment in C.R.P. 2731 of 1979 that the appeal pending before the appellate authority shall be disposed of without reference to the findings of the Taluk Land Board or orders of the revisional court since primarily it is the land reforms authority which is the competent authority to adjudicate upon the plea of tenancy.

4. The appellate authority (Land Reforms) dismissed the appeal filed by Ketcha Boyan. He challenged that judgment in C.R.P. 3729 of 1981 , which was allowed and the matter was remanded to the Land Tribunal for fresh consideration as per Ext.P2 judgment. After remand, the Land Tribunal allowed the application filed by Ketcha Boyan under section 72B

of the Act as per Ext. P3 order. Ext. P4 purchase certificate was also issued in favour of Ketch Boyan . Thereafter, a claim petition was filed by the legal representatives of Ketcha Boyan under section 85 (8) of the Act before the Taluk Land Board . Petitioner filed O.P. 1152 of 1996 for issue of a direction to the Taluk Land Board to dispose of that application under section 85(8) . The Original Petition was allowed and the Taluk Land Board was directed, as per Ext. P5 judgment, to dispose of the claim petition under section 85(8). Meanwhile, proceedings were initiated for assignment of excess land which was taken possession of in the ceiling case. Petitioner filed O.P. 1964 of 1998 which was disposed of as per Ext.P7 judgment directing the Taluk Land Board to dispose of the claim petition filed by Ketcha Boyan . The Taluk Land Board considered the application and passed Ext. P8 order dated 28.11.1998 allowing the application under section 85(8) filed by the petitioner and other legal representatives of Ketcha Boyan. The Taluk Land Board deducted an extent of 8.56 acres from the account of the assessee, viz., Subbayya Gownder . The Tahsildar was directed to re-convey the extent of 8.56 acres of land to the petitioner and the other legal representatives of

Ketcha Boyan. The land was re-conveyed to the petitioner in compliance with Ext. P8 order and basic tax was paid by the petitioner as evidenced by Ext. P9. On 31.07.1999, Ext.P10 notice was issued by the Taluk Land Board seeking to re-open and review Ext.P8 order and directing the petitioner to appear on 15.09.1999. It is stated in Ext.P10 that on 28.11.1998 when Ext. P8 order was passed, the Taluk Land Board which was re-constituted was not in existence and therefore the order dated 28.11.1998 has no legal validity. Ext. P10 notice is under challenge in this Original Petition.

5. No counter affidavit is filed in the case. Learned Government Pleader, on instructions, submitted that the Government re-constituted the Taluk Land Board as per G.O.(MS) 102/99/RD dated 23.03.1999. The term of the earlier Taluk Land Board which was constituted on 21.08.1995 for a period of three years had expired on 20.08.1998. Therefore it is contended that when Ext. P8 order dated 28.11.1998 was passed, there was no legally constituted Taluk Land Board in existence. It is also submitted that non-existence of Taluk Land Board was not noticed and that it is necessary to re-open the case by giving notice to the parties

concerned. It is contended that the proceedings of the Taluk Land Board for the period from 21.08.1998 to 23.03.1999 (or 22.03.1999) do not have any legal validity and that it is only a proper official procedure to re-open the case in such circumstances.

6. Section 100A of the of the Kerala Land Reforms Act provides for constitution of the Taluk Land Boards. Section 100 A reads as follows:

> *"100A. **Constitution of Taluk Land Boards**: (1) The Government shall by notification in the Gazette , constitute a Taluk Land Board for each taluk in the State for performing the functions of the Taluk Land Board under this Act.*
>
> *(2) A Taluk Land Board shall consist of the following members, namely:--*
> *(a) an officer not below the rank of Deputy Collector appointed by the Government , who shall be the Chairman of the Board;*
> *(b) not more than six members nominated by the Government.*
>
> *(2A) Notwithstanding anything contained in sub-section (2), but subject to such rules as may be made by the Government in this behalf, the functions of the Taluk Land Board may be performed by the Chairman alone or by the Chairman and anyone or more of the other members of the Board.*
>
> *(2B) The member or members present at any meeting of the Taluk Land Board may deal with any*

evidence or memorandum taken down or made in any case during any previous meeting or meetings of the Board as if such evidence or memorandum had been taken down or made by him or them and may proceed with that case from the stage at which it was left at the last previous meeting in which that case was dealt with by the Board.

(3) Subject to the provisions of sub-sections (2A) and (2B) the procedure to be followed by the Taluk Land Board in performance of its functions under this Act shall be such as may be prescribed.

(4) A person shall be disqualified for being nominated as, or for being , a member of the Taluk Land Board if he is or has been convicted of an offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than six months unless a period of five years has elapsed from the date of expiry of the sentence.

(5) The term of office of the Taluk Land Board and the manner of filling casual vacancies among the non-official members of the Board shall be such as may be prescribed.

(6) Any member nominated to fill the vacancy in the office of a member shall hold office only so long as the member in whose vacancy he was nominated would have held office if the vacancy had not occurred.
(6A) Any member of the Taluk Land Board other than the Chairman shall cease to hold office if he absents himself from three consecutive meetings of the Board.

Provided that no meeting from which a

member absented himself shall be counted against him under this sub-section , if due notice of that meeting was not given to him.

(6B) The members of the Taluk Land Board other than the Chairman shall be entitled to a sitting fee of ten rupees per day for attending the meetings of the Board.

Provided that that the Government may , by notification in the Gazette , and for reasons to be stated in such notification, fix such other amount as they deem fit, as sitting fee.

(7) The Government may, at any time, for reasons to be recorded in writing, remove from office any member of the Taluk Land Board after giving him a reasonable opportunity of showing cause against the proposed removal.

Provided that it shall not be necessary to record in writing the reasons for the removal or to give an opportunity of showing cause against the proposed removal , if the Government are of the opinion that it is not expedient , in the public interest , to record the reasons in writing or to give such opportunity."

7. Section 100B provides for dissolution and re-constitution of Taluk Land Board . It is relevant to extract Section 100B as well, which reads as follows:

"100B. Dissolution and reconstitution of Taluk

> ***Land Board :-*** *(1) If the Government are of the opinion that a Taluk Land Board is not functioning satisfactorily or in accordance with the provisions of this Act, the Government may, by notification in the Gazette, dissolve the Board after giving it an opportunity of showing cause against the proposed dissolution.*
>
> *(2) As soon as may be after the dissolution of a Taluk Land Board under sub-section (1) , the Government shall constitute a new Taluk Land Board in accordance with the provisions of Section 100A, and until such constitution, the Land Board shall exercise the powers and perform the functions of the Taluk Land Board ."*

8. Rules 103A of the Kerala Land Reforms (Tenancy) Rules 1970 provides that every final order of the Taluk Land Board shall be written by the Chairman of the Taluk Land Board and circulated to the other members who may either agree to the order or write separate order agreeing or disagreeing to the order written by the Chairman. Sub rule (3) of Rule 103A provides that every final order of the Taluk Land Board shall be pronounced by the Chairman. Rule 137A states that the term of office of the Taluk Land Board shall be three years from the date of its constitution. Rule 137B provides that casual vacancies among the non-

official members of the Taluk Land Board shall be filled up by the Government .

9. A distinction is to be drawn between the re-constitution of the Taluk Land Board on the expiry of the period of Taluk Land Board constituted earlier as well as re-constitution of the Taluk Land Board after its dissolution under section 100B. A dissolution under section 100B can be had if the Government are of opinion that Taluk Land Board is not functioning satisfactorily or in accordance with the provisions of the Act. After dissolution of the Taluk Land Board under section 100B of the Act, the Government shall constitute a new Taluk Land Board under section 100A. Section 100B provides that until such constitution, the Land Board shall exercise the powers and perform the functions of the Taluk Land Board. In the case of a Taluk Land Board constituted under section 100A, there is no provision in Section 100 or elsewhere in the Act that the Land Board shall exercise the powers and perform the functions of the Taluk Land Board in the interregnum between the expiry of the period for which it was constituted and the date of re-constitution of the Taluk Land Board. A reading of Section 100A and 100B would lead to the inevitable

conclusion that in the case of constitution of a Taluk Land Board under section 100A, that Taluk Land Board shall continue to function until a new Board is constituted notwithstanding the expiry of its term . A specific provision conferring power on the State Land Board to exercise powers and perform the functions of the Taluk Land Board after its dissolution under section 100B and the conspicuous absence of such a provision in 100A or anywhere else in the Act in respect of the Taluk Land Board on the expiry of its term would fortify this conclusion. It is common knowledge and judicial notice of the same can be taken that hundreds of ceiling cases are being dealt with by the Taluk Land Boards. If it were to be held that orders passed by the Taluk Land Board after expiry of the period of its constitution are invalid, it would lead to disastrous consequences. Litigants would be put to untold misery and the interest of the State also would be put to serious prejudice if it were to be held so. If cases in which excess land holders have surrendered lands were to be re-opened on the ground that at the time when final orders were passed by the Taluk Land Board its term had expired, the interests of the State and

the people would be adversely affected. If such an interpretation is accepted, declarants and assessees who had surrendered lands would rush to the court seeking to nullify the orders of the Taluk Land Board. Such persons may even claim the benefits of the Kerala Land Reforms (Amendment)Act, 2005 (Act 21 of 2006). Therefore I am inclined to take a view that Ext.P8 order passed by the Taluk Land Board is perfectly legal and valid though the term of the Taluk Land Board expired on 20.08.1998. In this context, it is also relevant to note that the Chairman of the Taluk Land Board shall be an officer not below the rank of a Deputy Collector and that under sub section (2A) of Section 100A, the functions of the Taluk Land Board may be performed by the Chairman alone. Even if a Taluk Land Board is re-constituted, its Chairman shall be an officer not below the rank of a Deputy Collector.

10. To my mind, “de facto doctrine” would protect Exhibit P8 order dated 28.11.1998 passed by the Taluk Land Board. In ***Gokaraju Rangaraju vs. State of Andhra Pradesh*** **(AIR 1981 S.C. 1473)**, the Supreme Court, dealing with de facto doctrine, held thus:

> *"The doctrine is now well established that "the acts of the Officers de facto performed by them within the scope of their assumed official authority, in the interest of the public or third persons and not for their own benefit, are generally as valid and binding, as if they were the acts of officers de jure" (Pulin Behari v. King Emperor [(1912) 15 Cal. LJ 517 at. p. 574). As one of us had occasion to point out earlier "the doctrine is founded on good sense, sound policy and practical experience. It is aimed at the prevention of public and private mischief and the protection of public and private interest. It avoids endless confusion and needless chaos. An illegal appointment may be set aside and a proper appointment may be made, but the acts of those who hold office de facto are not so easily undone and may have lasting repercussions and confusing sequels if attempted to be undone. Hence the de facto doctrine".*

In ***P.S. Menon vs. State of Kerala,*** **(AIR 1970 KERALA 165)**, the Full Bench held as follows:

> *"That the members appointed by the Raj Pramukh functioned as the members of the Public Service Commission and discharged effectively the duties of the Public Service Commission during the entire period 26th*

January, 1950 to 01.11.1956 is not disputed before us. In these circumstances, what is called the de facto doctrine, we consider, must apply.

This doctrine was engrafted as a matter of policy and necessity to protect the interest of the Public and individuals involved in the official acts of persons exercising the duty of an officer without actually being one in strict point of law. But although these officers are not officers de jure they are by virtue of the particular circumstances, officers, in fact, whose acts, public policy requires should be considered valid."

In ***Padmanabhan Nambiar vs. Government of Kerala*** **(1997 (2) KLT 725)** and in ***Manager , St. Mary's H.S. vs. Beji Abraham*** **(2002 (1) KLT 406)**, de facto doctrine was applied to uphold the appointments made by Managers of Schools whose appointments as Managers were subsequently found to be illegal or irregular.

11. On another ground also, Ext.P10 notice is wholly illegal and without jurisdiction. The jurisdiction of the Taluk Land Board to re-open or review or re-consider a matter which has already been decided, lies in

specific limited spheres. There is no inherent power vested in the Taluk Land Board to re-open a case or to re-hear a case or to review a case. The Taluk Land Board has no jurisdiction to review its own decision. The Taluk Land Board has jurisdiction to entertain an application under section 85(8) of the Act, at the instance of a person who is not a party to the ceiling case. If an application under section. 85(8) is entertained and allowed , the Taluk Land Board shall set aside the order under 85 (5) or 85(7) as the case may be and shall proceed under sub -section (5) or sub-section (7) of Section 85. Sub section (9) of Section 85 empowers the Taluk Land Board, at any time, to set aside its order under sub-section (5) or sub-section (7) of Section 85 and proceed afresh, if it is satisfied that the extent of lands surrendered by or assumed from, a person under Section 86 is less than the extent of lands which he was liable to surrender under the provisions of the Act, or the lands surrendered by, or assumed from, a person are not lawfully owned or held by him; or in a case where a person is, according to such order, not liable to surrender any land, such person owns or holds lands in excess of the ceiling area. The second proviso to sub-section (9) of Section 85 states that the Taluk

Land Board shall not initiate any proceedings under section 85(9), after the expiry of seven years from the date on which the order sought to be set aside has become final. Sub-section (9A) was inserted in Section 85 by the Kerala Land Reforms (Amendment) Act 1989 which came into force on 30.05.1989 granting power to the Taluk Land Board to review its decision. Sub-section (9A) reads as follows:

> *"(9A) Power of Taluk Land Board to review its decision: Notwithstanding anything contained in this Act or in the Limitation Act, 1963 (Central Act 36 of 1963), or in any other law for the time being in force, or in any judgment , decree or order of any Court or other authority, the Taluk Land Board may , if it is satisfied that its decision under sub-section (5) or sub-section (7) or sub-section (9) required to be reviewed on the ground that such decision has been made due to the failure to produce relevant data or other particulars relating to ownership or possession before it, or by collusion or fraud or any suppression of material facts the Taluk Land Board may review such decision after giving an opportunity to the parties of being heard and pass such orders as it may think fit.*
>
> *Provided that the Taluk Land Board shall not reopen any such case after the expiry of three years from the date of coming into force the Kerala Land Reforms (Amendment) Act , 1989".*

12. The aforesaid provisions are the provisions enabling the Taluk Land Board to review its order or to re-hear or re-open the case already decided by it. Rule 136A of the Kerala Land Reforms (Tenancy) Rules empowers the Taluk Land Board to correct clerical or arithmetical mistakes in the order or errors arising therein from any accidental slip or omission, either suo motu or on application. A Taluk Land Board re-constituted under Section 100A has no authority or jurisdiction to review or re-consider orders passed by the erstwhile Taluk Land Board and to hold that such orders are illegal or without jurisdiction on the ground that the term of the erstwhile Board had expired when the order was passed. A re-constituted Taluk Land Board has no authority to issue a notice like Ext.P10 and to review the order passed by the erstwhile Board. Even if an order is passed by the Taluk Land Board after expiry of its term, that is not a matter for consideration by the succeeding Taluk Land Board . There is no power vested in the Taluk Land Board to scrutinize the decisions of the erstwhile Board or to examine the legality or otherwise of the orders passed earlier except on grounds which are provided in the Act and Rules.

Limited jurisdiction of a Taluk Land Board to reopen or to review its orders being only those enumerated in the Act, I am of the view that Ext. P10 notice is wholly without jurisdiction.

I therefore allow this Original Petition and quash Ext.P10 notice.

K.T. SANKARAN,
JUDGE.

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K.T. SANKARAN, J.

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O.P.No. 23042 OF 1999

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Dated this the 21st March, 2007

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